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07-1548

Aug 9, 07

No. (1)

IN THE
SUPREME COURT OF THE UNITED STATES

RALPH DEWAYNE MOORE, IN A MATTER FOR HIS MINOR CHILD, DEWAYNE JUNIOR MCKINLEY MOORE,

PETITIONER,

V.

STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES,

RESPONDENTS,

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE AT KNOXVILLE (EASTERN DIVISION)

PETITION FOR WRIT OF CERTIORARI

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PETITIONER

QUESTIONS PRESENTED

01) Did the Court of Appeals err in holding that *In Re T.K.Y., 205 S.W.3d 343 (Tenn. 2006)* was factually on point with this case and holding that Johnnie Anderson's rights as the biological father of D.J.M.M. were superior to those of Ralph Dewayne Moore? Did the Tennnessee Supreme Court in this case decide that the biological father's rights **are always** superior to the rights of another would-be-father? Did that decision stand for the proposition that a biological father's rights are always paramount; even when that father never attempted on his own volition to exercise those rights and responsibilities? Are the biological father's rights paramount to the best interests of the minor child? It is that the Petitioner's contention that this Court's decision in *In Re T.K.Y.* did not stand for any of those propositions. It is also that the Petitioner's contention that the determination of his parental rights, or lack thereof, is an extremely important question of fact, law and public policy. In contrast in *In Re T.K.Y.*, the father filed a Petition to Establish Paternity and at least showed interest in being a father to T.K.Y. In the Petitioner's case, Johnnie Anderson did nothing on his own volition to establish paternity. The establishment of paternity was totally driven by the State Of Tennessee. The biological father should at least assert his own constitutionally protected rights to be a parent before those rights be given paramount consideration. In the Petitioner's case, it was the State Of Tennessee that asserted these fundamental rights, not Johnnie Anderson.

02) Should the trial court refuse to consider the DNA evidence based on "Equitable estoppel" since Ralph Dewayne Moore's wife, Crystal Moore, continually represented to him and others that he was the child's father and had encouraged Ralph Dewayne Moore to develop a strong bond with the child?

{In Re Hinshaw v. Hinshaw (Kentucky 2006)}. There were tremendous procedural and substantive errors in how the trial court arrived at its decision to terminate the Petitioner's parental rights. The State Of Tennessee should have been estopped from changing its preference as to who was the father of Dewayne Junior McKinley Moore. It had previously asserted in a pleading that the Petitioner was the father. Johnnie Anderson never filed anything on his own behalf regarding his desire to be the father of Dewayne Junior McKinley Moore. Even thought the rights of the biological father are superior to the rights of another would-be-father, the biological father should have to assert those rights timely and voluntarily over the would-be-father. He should not be allowed to sit on those rights for an unreasonable amount of time and have the State assert those rights for him.

03) Is it constitutionally right for a father that raises a child as his own, be forced to sever all ties with that child when a mother retaliates? Does the Tennessee General Assembly have to adopt either a Uniform Parentage Act or any other statutory mechanism curtailing the legal rights of a biological father where his child is born during the mother's marriage to another man?

04) Is it fair that the former Judge Thomas Austin be allowed to make decisions under the influence of drugs and alcohol and later was arrested on January 23, 2006 after being under surveliance during our trial and convicted of extortion, etc., and is now serving time in a federal prison?

05) When a man executes a voluntary acknowledgement of paternity, he acknowledges that he accepts responsibility of being a parent to the child, and most importantly, he specifically waives his right to genetic testing. The VAP statute sets forth a statute of limitations which provides time limits in which a man can challenge a VAP. In this case,

State of Tennessee, ex rel. Melinda Robinson v. Jessie Glenn, Jr. No. W2006-00557-COA-R3-JV (Tennessee Court Appeals April 26, 2007). Why wasn't the T.K.Y. case applied to this case since this man isn't the biological father and he can't rescind his VAP or child support? Accordingly to the T.K.Y. case, this man shouldn't have to be the father or pay child support because he has proven he isn't the biological father.

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Ralph Dewayne Moore, citizen of the United States and residing in the Eastern District of Tennessee. In the matter of his minor child, Dewayne Junior McKinley Moore. Petitioner was the Plaintiff in the Supreme Court of Tennessee at Knoxville (Eastern Division). PRO SE

Respondents

Respondents is the State of Tennessee, Department of Children's Services, individual citizens of the United States. The respondents were the Defendants in the Supreme Court of Tennessee at Knoxville (Eastern Division). Their attorney is Juan G. Villasenor, Assistant Atttorney General, Office of the Attorney General, 425 Fifth Avenue, North, P.O. Box 20207, Nashville, TN 37202.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....I-III

PARTIES TO THE PROCEEDINGS.....IV

TABLE OF CONTENTS.....V

PETITION FOR A WRIT OF CERTIORARI.....1

OPINIONS BELOW.....2

STATEMENT OF JURISDICTION.....2

STATEMENT OF THE CASE.....3-6

REASONS FOR GRANTING THE
WRIT OF CERTIORARI.....7-9

CONCLUSION.....10

INDEX TO APPENDICES

APPENDIX A
COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE ORDER.....11

APPENDIX B
SUPREME COURT OF TENNESSEE
AT KNOXVILLE ORDER.....12

APPENDIX C
COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE ORDER.....13-15

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petition for a writ of certiorari to review the judgment of the Supreme Court Of Tennessee At Knoxville (Eastern Division) in this case.

OPINIONS BELOW

The opinion of the Tennessee Supreme Court at Knoxville (Eastern Division) filed May 14, 2007.

STATEMENT OF JURISDICTION

The Tennessee Supreme Court at Knoxville (Eastern Division) entered its order on May 14, 2007. The petitioner is invoking to the highest court for help as the last resort.

STATEMENT OF THE CASE

Petitioner, Ralph Dewayne Moore was married to Crystal Gale Pressley on April 17, 1999. The parties had not divorced each other at the time of the court hearing on October 4, 2005. On August 28, 2000, during Petitioner's marriage to Crystal Moore, Ms. Moore gave birth to Dewayne Junior McKinley Moore. Ralph Dewayne Moore was listed as the father of the minor child on the Tennessee Department of Health, Certificate of Live Birth.

The Department of Children's Services filed a Petition for Temporary Custody and ordered into the protective custody of the State of Tennessee on June 16, 2002 on the grounds that Dewayne Junior McKinley Moore was dependent and neglected child and that his parents Crystal Moore and Ralph Dewayne Moore were unable to care for him. In that Petition, the Department of Children's Services named Petitioner as the father of Dewayne Junior McKinley Moore.

On September 4, 2002, Petitioner, through his sister Rebecca Moore, filed a pro se answer to the Petition for Temporary Custody denying their allegations. In the Petitioner's answer, he referred to a psychological evaluation conducted by Dr. Candice Blake, Certified Child Psychologist on Dewayne Junior McKinley Moore on July 2, 2002 and July 9, 2002. The psychological evaluation stated that the Petitioner was clinically depressed. Dr. Candice Blake's Summary and Recommendations stated as follows:

> Junior Moore appears to be a happy, well-adjusted 23 month
>
> old. He is emotionally attached to his paternal grandmother
>
> who has been his primary caretaker since birth. He apparently relates to his parents who come to visit. It would be extremely detrimental to Junior's emotional well-being and further development for this
>
> relationship to be interrupted. It is recommended that Junior remain in the physical custody of his paternal

grandmother, and if necessary, she should be awarded legal custody.

On September 4, 2002, Linda Moore and Rebecca Moore filed a Motion To Intervene by Paternal Grandmother and Paternal Aunt.

On October 7, 2003, the court approved the Department of Children's Service permanency plan for the minor child. This hearing was held without the Petitioner or appointed attorney.

The Guardian Ad Litem in the case filed a Complaint to Establish Parentage on April 13, 2004. In the Petition, she alleged that either Ralph Dewayne Moore or Johnnie Anderson was the biological father of the minor child and genetic tests should be ordered to determine the father of the minor child. The Petitioner, Linda Moore, and Rebecca Moore filed answers denying that Johnnie Anderson was the father and stating that there was no need for any DNA test because Petitioner was the father and there was a marital presumption of his paternity. Petitioner also filed an objection to the ordered parentage test and attached interrogatory answers of Crystal Moore where she claimed that Petitioner is the biological father of the minor child. The Peitioner went to child support court to make child support payments because he never denied his son but the Judge refused any child support from him.

On June 28, 2004, the court ordered a DNA test to be conducted on Johnnie Anderson. The genetic test report found that Johnnie Anderson was the likely biological father by a probability of 99.88%. Court was held that day without the Petitioner's attorney and wouldn't grant a continuance. Furthermore, it was never mentioned that a DNA test was collected on Johnnie Anderson on April 22, 2004 and completed on May 21, 2004 before any orders from the court on June 28, 2004.

On August 23, 2004, an agreed order of paternity was entered between the State of Tennessee and Johnnie Anderson granting Johnnie Anderson paternity and setting child support in the Circuit Court of Roane County, Tennessee.

The Petitioner, Linda Moore, and Rebecca Moore, and their attorneys were not notifed of this hearing.

The minor child was placed in the temporary custody of Johnnie Anderson's mother, Linda Anderson in August 2004. On December 1, 2004, Linda Anderson, the naturanl paternal grandmother, filed a Petition for Temporary Custody of the minor child but the Petitioner, Linda Moore, and Rebecca Moore and their attorneys were never notified or served with this petition or court hearing.

On January 5, 2005, a temporary order was entered continuing the case for further hearing. The Order left the child in the custody of the Department of Children's Services, reserved the Petitions of Linda and Rebecca Moore for further hearing, commanded Petitioner to submit to DNA testing within thirty days, approved the Department of Children's Services permanency plan and granted supervised visitation to Crystal Moore. On February 2, 2005. a consent order was entered continuing the case to allow the Child Support Division to obtain DNA testing from Petitioner.

A motion for a psychological examination was filed by Linda and Rebecca Moore on August 16, 2005. An order of continuance was entered on September 12, 2005. A motion for psychological evaluation of the minor child and continuance was filed by Petitioner on October 4, 2005 to determine the best interests of the minor child. The court conducted a hearing on the issues of parentage of the minor child and custody of the minor child on October 4, 2005.

According to Crystal Moore, Johnnie Anderson saw the minor child about five times after Crystal Moore and Petitioner alleged separation. Crystal Moore testified that she told the Department of Children's Services and Judge Humphreys that Johnnie Anderson was the father of the minor child. She had told the Department of Children's Services that Johnnie Anderson was the minor child's father before the Department filed the Petition for Temporary Custody asserting that the Petitioner was the father. She started

telling the State of Tennessee that Petitioner was not the father of Dewayne Junior McKinley Moore while she was pregnant with him. According to Ms. Moore, Johnnie Anderson knew he was the biological father of the minor child when the child was born. She told the hospital that Johnnie Anderson was the father of the minor child, but that they told her that the Petitioner had to be put on the birth certificate. The guardian ad litem asked her about a paternity test todetermine who was the father of the minor child.

According to Johnnie Anderson, his relationship with Crystal Moore ended around the end of 1999. Mr. Anderson found out the minor child was his during Ms. Moore's pregnancy. He first saw the minor child when the child was about three years old. He only made one child support payment because of a forced child support order for the minor child and was unemployed because his driver license was suspended from DUI convictions. He didn't ask Crystal Moore about visiting with the child because she was married at the time and he thought the Petitioner was the father of the minor child.

An Order of Parentage was entered on October 14, 2005 granting parentage to Johnnie Anderson.

The Petitioner filed a timely notice of appeal to the Court of Appeals At Knoxville on October 28, 2005.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. WHETHER THE IN TRIAL COURT'S FINDINGS THAT JOHNNIE ANDERSON WAS THE LEGAL FATHER, THE COURT CONSIDERED THE BEST INTEREST OF THE MINOR CHILD SINCE THERE WERE COMPETING PRESUMPTIONS OF PATERNITY.

There were competing presumptions of paternity between Petitioner and Johnnie Anderson and the Court didn't consider any of the relevant factors regarding the best interests of the minor child.

Pursuant to Tennessee Code Ann. & 36-2-304 (a) A man is rebuttably presumed to be the father of a child if:

(1) The man and the child's mother are married or have been married to each other and the child is born during the marriage or with three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce;

(4) While the child is under the age of majority, the man receives the child into the man's home and openly hold the child out as the man's natural child; or

(5) Genetic tests have been administered as provided in & 24-7-112, and exclusion has not occurred, and the test results show a statistical probability of parentage of ninety-five percent (95%) or greater.

(2)(A) If the mother was legally married and living with her husband at the time of conception and has remained together with that husband through the date a petition to establish parentage is filed and both the mother and the mother's husband file a sworn answer stating that the husband is the father of the child, any action seeking to establish parentage must be brought with twelve (12) months of the birth of the child. In the

event that an action is dismissed based upon the filing of such a sworn answer, the husband and wife who filed such sworn answer shall be estoppel to deny paternity in any future action.

Tennessee Code Ann. & 36-2-304.

When two men have rebuttable presumptions of paternity, the trial court is to consider the following factors/

(1) the stability of the child's current family environment,
(2) the existence of an on-going family unit,
(3) the source or sources of the child's support,
(4) the child's relationship with the presumptive father, and
(5) the child's physical, mental, and emotional needs.

Cihlar v. Crawford, 39 S.W.3d 172, 185 (Tenn. Ct. App. 200). The trial court did not consider the Cihlar factors to consider the level of commitment to parenthood that the presumptive father or fathers have demonstrated. In this case, the trial court also failed to consider any of the Cihlar factors. Johnnie Anderson did not even see Dewayne Junior McKinley Moore until three years after he was born. He only made one payment of child support after he was court ordered to provide support. Although there was evidence that he had reason to know that he may have been the biological father of the minor child, he took no effort to establish paternity on his own volition. He merely planted the seed. He didn't even file suit. He never made any attempt to establish any relationship with the minor child.

The evidence shows that Crystal Moore treated the Petitioner as the father of the minor child. She named the child after the Petitioner, Petitioner's father, and Petitioner's grandfather. She allowed his name to be placed on the birth certificate. She claimed that Petitioner is the biological father of the minor child in interrogatories. Notwithstanding her denials, she and the Petitioner both held the Petitioner as the father of the minor child.

The Petitioner was refused to pay child support and demonstrated several times his desire to be a part of his son's life. The Petitioner filed a pro se answer to the Petition to Establish Paternity demonstrating his desire to be in his minor child's life. His letters to the trial court also demonstrated his plea allowed to be in his child's life.

The Petitioner's relatives, Linda and Rebecca Moore, attempted to obtain custody of the minor child throughout this case. The psychological evaluation conducted by Dr. Candice Blake found that the minor child was "emotionally attached to his paternal grandmother, Linda Moore, who has been his caretaker since birth" and that "it would be extremely detrimental to Junior's emotional well-being and further development for this relationship to be interrupted.

The trial court failed to allow Linda or Rebecca Moore to testify at the hearing on October 4, 20054 stating that they had no standing. The trial court granted custody to Johnnie Anderson's mother, Linda Anderson, without hearing any testimony from her. There was no proof in the record as to her fitness to have custody of the minor child.

The Department of Children's Services had previously asserted that Petitioner was the father of the minor child in the Petition for Temporary Custody, but it is unclear why it later decided to assist Johnnie Anderson in a paternity suit that he himself had no interest in pursuing.

With respect to Johnnie Anderson, while apparently a bioligical parent, he never fulfilled any parental duties or acted as a natural parent prior to the commencement of this action but rather relinquished custody of Dewayne Junior McKinley Moore to the Petitioner and his wife.

It is clear from the record that the Department of Children's Services and the trial court placed too much emphasis on the genetic testing and failed to follow the established law to determine the best interests of the minor child.

CONCLUSION

I am respectfully praying for the Honorable Supreme Court of the United States to grant the writ of certiorari to reunite my son with his family. This case painfully illustrates the family turmoil and legal morass created when a child born during a marriage is not a child of the marriage, and the child's mother retaliates by severing all ties with the child and the only father the child knew.

Respectfully Submitted,

Ralph Dewayne Moore

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Phone No. 865-882-0996
August 9, 2007 (Original Filed)
October 11, 2007 (Corrected)
Petitioner

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

R.D.M. V. STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES, IN THE MATTER OF: D.J.M.M., JR., D.O.B. 8-28-2000

Juvenile Court for Roane County
No. 13497

No. E2006-00283-COA-R3-JV

ORDER

The appellant, R.D.M., has filed a Petition for Rehearing in this cause.

Upon consideration of the Petition, the Court respectfully denies the Petition to Rehear.

"s/Herschel Pickens Franks, P.J."

Herschel Pickens Franks, P.J.

"s/Charles D. Susano, Jr., J"

Charles D. Susano, Jr., J

"s/Sharon G. Lee, J."

Sharon G. Lee, J.

FILED JAN 16 2007
Clerk of the Courts

11

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

IN RE: D.J.M.M.

No. E2006-00283-SC-R11-JV

ORDER

Upon consideration of R.D.M.'s application for permission to
appeal and the record before us, the application is denied.

PER CURIAM

FILED MAY 14 2007
Clerk of the Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 8, 2006 Session

R.D.M. v. STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES, IN THE MATTER OF: D.J.M.M., JR., D.O.B. 8/28/00

Direct Appeal from the Juvenile Court for Roane County No. 13497 Hon. Thomas A. Austin, Judge

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No. E2006-00283-COA-R3-JV -FILED DECEMBER 19, 2006

Appellant, who was married to the mother at the birth of the child, claims the Trial Court erred in failing to engage in a comparative fitness test in awarding the child to a person who by DNA testing was shown to be the biological father. We affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Juvenile Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and SHARON G. LEE, J., joined.

Charles D. Buckholts, Nashville, Tennessee, for appellant.

Jennifer E. Raby, Rockwood, Tennessee, attorney *ad litem*.

Paul G. Summers, Attorney General and Reporter, and Juan G. Villasenor, Assistant Attorney General, Nashville, Tennessee, for Department of Children's Services.

OPINION

This action originated when the State Department of Children's Services filed a Petition for Temporary Custody of D.J.M.M., Jr., alleging that he was a dependent and neglected child. Subsequently, the guardian ad litem filed a Complaint to Establish Parentage, naming DCS, the Mother, C.M., and R.D.M., along with J.A. The Complaint alleged that the mother, C.M., had acknowledged that J.A. was actually the biological father of the child, and the Complaint asks for genetic testing. R.D.M. objected to the testing, asserting that he was the legal father of the child due to his marriage to the mother. Genetic testing was performed on J.A., showing him to be the biological father of the child, and on October 14, 2005, an Order of Parentage was entered by the Trial Judge, finding that J.A. was the father of the child, and custody of the child was given to L.A., the paternal grandmother. C.M. was given visitation rights, and J.A. was ordered to pay child support. R.D.M. filed Notice of Appeal.

The issue on appeal is whether the Trial Court should have employed the best interests analysis in finding J.A. to be the father, since there were competing presumptions of paternity?

Appellant asserts that both he and J.A. had rebuttable presumptions of paternity pursuant to Tenn. Code Ann. &36-2-304(a), since he was married to the child's mother at the time the child was born, and since J.A. had the positive DNA test. He argues that pursuant to *Cihlar v. Crawford*, 39 S.W.3d 172 (Tenn. Ct. App. 2000), when two men have competing presumptions of paternity, the court must engage in a best interests analysis to determine who is the legal father. Appellant argues that the holding in *Cihlar* was followed by this Court's decision in *In re TKY*, 2005 Tenn. App. LEXIS 415 (Tenn. Ct. App. 2005),

which he asserts is factually on point in this case, but admitted in his brief that permission to appeal had been granted in *TKY*, and that the Supreme Court's decision would likely control the outcome of this case.

The guardian's brief points out that the Supreme Court did issue a decision in *TKY* on August 28, 2006, wherein this Court was reversed. The Supreme Court found that the biological father (as shown by DNA testing) should be adjudged the legal father, and that it was constitutionally impermissible to engage in a balancing test which had the result of stripping a biological parent of his rights. *In re TKY,* 2006 WL 2467060 (Tenn. Aug. 28, 2006). *TKY* is factually on point with the present case, as it involved a married woman who had an affair, and the child who was born during her marriage was found to be the child of her paramour pursuant to DNA testing. Both men sought to be declared the legal father of the child, and this Court found that they had competing presumptions of paternity under Tenn. Code Ann. &36-2-304(a), and engaged in the best interests analysis set forth in *Cihlar.* The Supreme Court reversed that judgment, stating:

> Once the biological father has established his paternity, his constitutionally-protected fundamental right to parent his child vests and he is the legal father. That right may only be stripped pursuant to the statutory parental termination procedures- it may not be forfeited in a balancing test or to another man who may appear to be a more ideal father.

Id. at 8.

In this case J.A. has been shown to be the biological father of the child, and his rights cannot be forfeited to the appellant by using the balancing test. Accordingly, we affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to R.D.M.

"s/Herschel Pickens Franks, P.J."

HERSCHEL PICKENS FRANKS, P.J.